

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 378

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Read 1st time February 16, 2009, and ordered printed.

Read 2nd time February 19, 2009, and referred to the Committee on Health, Mental Health, Seniors and Families.

Reported from the Committee March 11, 2009, with recommendation that the bill do pass and be placed on the Consent Calendar.

Removed from the Consent Calendar March 12, 2009.

Re-reported from the Committee March 26, 2009, with recommendation that the bill do pass.

Taken up for Perfection April 1, 2009. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

1935S.01P

AN ACT

To repeal sections 208.437, 208.480, 338.535, 338.550, and 633.401, RSMo, and to enact in lieu thereof five new sections relating to certain provider taxes, with an emergency clause and an expiration date for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 208.437, 208.480, 338.535, 338.550, and 633.401, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 208.437, 208.480, 338.535, 338.550, and 633.401, to read as follows:

208.437. 1. A Medicaid managed care organization reimbursement allowance period as provided in sections 208.431 to 208.437 shall be from the first day of July to the thirtieth day of June. The department shall notify each Medicaid managed care organization with a balance due on the thirtieth day of June of each year the amount of such balance due. If any managed care organization fails to pay its managed care organization reimbursement allowance within thirty days of such notice, the reimbursement allowance shall be delinquent. The reimbursement allowance may remain unpaid during an appeal.

2. Except as otherwise provided in this section, if any reimbursement allowance imposed under the provisions of sections 208.431 to 208.437 is unpaid and delinquent, the department of social services may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid managed care organization are

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 located. In addition, the director of the department of social services or the
15 director's designee may cancel or refuse to issue, extend or reinstate a Medicaid
16 contract agreement to any Medicaid managed care organization which fails to pay
17 such delinquent reimbursement allowance required by sections 208.431 to 208.437
18 unless under appeal.

19 3. Except as otherwise provided in this section, failure to pay a delinquent
20 reimbursement allowance imposed under sections 208.431 to 208.437 shall be
21 grounds for denial, suspension or revocation of a license granted by the
22 department of insurance, financial institutions and professional registration. The
23 director of the department of insurance, financial institutions and professional
24 registration may deny, suspend or revoke the license of a Medicaid managed care
25 organization with a contract under 42 U.S.C. Section 1396b(m) which fails to pay
26 a managed care organization's delinquent reimbursement allowance unless under
27 appeal.

28 4. Nothing in sections 208.431 to 208.437 shall be deemed to affect or in
29 any way limit the tax-exempt or nonprofit status of any Medicaid managed care
30 organization with a contract under 42 U.S.C. Section 1396b(m) granted by state
31 law.

32 5. Sections 208.431 to 208.437 shall expire on **[June] September 30,**
33 **[2009] 2011.**

208.480. Notwithstanding the provisions of section 208.471 to the
2 contrary, sections 208.453 to 208.480 shall expire on September 30, **[2009] 2011.**

338.535. 1. The pharmacy tax owed or, if an offset has been made, the
2 balance after such offset, if any, shall be remitted by the pharmacy **or the**
3 **pharmacy's designee** to the department of social services. The remittance shall
4 be made payable to the director of the department of revenue and shall be
5 deposited in the state treasury to the credit of the "Pharmacy Reimbursement
6 Allowance Fund" which is hereby created to provide payments for services related
7 to the Medicaid pharmacy program. All investment earnings of the fund shall be
8 credited to the fund.

9 2. An offset authorized by section 338.530 or a payment to the pharmacy
10 reimbursement allowance fund shall be accepted as payment of the obligation set
11 forth in section 338.500.

12 3. The state treasurer shall maintain records showing the amount of
13 money in the pharmacy reimbursement allowance fund at any time and the
14 amount of investment earnings on such amount.

15 4. Notwithstanding the provisions of section 33.080, RSMo, to the
16 contrary, any unexpended balance in the pharmacy reimbursement allowance
17 fund at the end of the biennium shall not revert to the credit of the general
18 revenue fund.

 338.550. 1. The pharmacy tax required by sections 338.500 to 338.550
2 shall expire ninety days after any one or more of the following conditions are met:

3 (1) The aggregate dispensing fee as appropriated by the general assembly
4 paid to pharmacists per prescription is less than the fiscal year 2003 dispensing
5 fees reimbursement amount; or

6 (2) The formula used to calculate the reimbursement as appropriated by
7 the general assembly for products dispensed by pharmacies is changed resulting
8 in lower reimbursement to the pharmacist in the aggregate than provided in
9 fiscal year 2003; or

10 (3) **[June] September 30, [2009] 2011.**

11 The director of the department of social services shall notify the revisor of
12 statutes of the expiration date as provided in this subsection. The provisions of
13 sections 338.500 to 338.550 shall not apply to pharmacies domiciled or
14 headquartered outside this state which are engaged in prescription drug sales
15 that are delivered directly to patients within this state via common carrier, mail
16 or a carrier service.

17 2. Sections 338.500 to 338.550 shall expire on **[June] September 30,**
18 **[2009] 2011.**

 633.401. 1. For purposes of this section, the following terms mean:

2 (1) "Engaging in the business of providing health benefit services",
3 accepting payment for health benefit services;

4 (2) "Intermediate care facility for the mentally retarded", a private or
5 department of mental health facility which admits persons who are mentally
6 retarded or developmentally disabled for residential habilitation and other
7 services pursuant to chapter 630, RSMo. Such term shall include habilitation
8 centers and private or public intermediate care facilities for the mentally retarded
9 that have been certified to meet the conditions of participation under 42 CFR,
10 Section 483, Subpart 1;

11 (3) "Net operating revenues from providing services of intermediate care
12 facilities for the mentally retarded" shall include, without limitation, all moneys
13 received on account of such services pursuant to rates of reimbursement
14 established and paid by the department of social services, but shall not include

15 charitable contributions, grants, donations, bequests and income from nonservice
16 related fund-raising activities and government deficit financing, contractual
17 allowance, discounts or bad debt;

18 (4) "Services of intermediate care facilities for the mentally retarded" has
19 the same meaning as the term used in Title 42 United States Code, Section
20 1396b(w)(7)(A)(iv), as amended, and as such qualifies as a class of health care
21 services recognized in federal Public Law 102-234, the Medicaid Voluntary
22 Contribution and Provider Specific Tax Amendment of 1991.

23 2. Beginning July 1, 2008, each provider of services of intermediate care
24 facilities for the mentally retarded shall, in addition to all other fees and taxes
25 now required or paid, pay assessments on their net operating revenues for the
26 privilege of engaging in the business of providing services of the intermediate
27 care facilities for the mentally retarded or developmentally disabled in this state.

28 3. Each facility's assessment shall be based on a formula set forth in rules
29 and regulations promulgated by the department of mental health.

30 4. For purposes of determining rates of payment under the medical
31 assistance program for providers of services of intermediate care facilities for the
32 mentally retarded, the assessment imposed pursuant to this section on net
33 operating revenues shall be a reimbursable cost to be reflected as timely as
34 practicable in rates of payment applicable within the assessment period,
35 contingent, for payments by governmental agencies, on all federal approvals
36 necessary by federal law and regulation for federal financial participation in
37 payments made for beneficiaries eligible for medical assistance under Title XIX
38 of the federal Social Security Act.

39 5. Assessments shall be submitted by or on behalf of each provider of
40 services of intermediate care facilities for the mentally retarded on a monthly
41 basis to the director of the department of mental health or his or her designee
42 and shall be made payable to the director of the department of revenue.

43 6. In the alternative, a provider may direct that the director of the
44 department of social services offset, from the amount of any payment to be made
45 by the state to the provider, the amount of the assessment payment owed for any
46 month.

47 7. Assessment payments shall be deposited in the state treasury to the
48 credit of the "Intermediate Care Facility Mentally Retarded Reimbursement
49 Allowance Fund", which is hereby created in the state treasury. All investment
50 earnings of this fund shall be credited to the fund. Notwithstanding the

51 provisions of section 33.080, RSMo, to the contrary, any unexpended balance in
52 the intermediate care facility mentally retarded reimbursement allowance fund
53 at the end of the biennium shall not revert to the general revenue fund but shall
54 accumulate from year to year. The state treasurer shall maintain records that
55 show the amount of money in the fund at any time and the amount of any
56 investment earnings on that amount.

57 8. Each provider of services of intermediate care facilities for the mentally
58 retarded shall keep such records as may be necessary to determine the amount
59 of the assessment for which it is liable under this section. On or before the
60 forty-fifth day after the end of each month commencing July 1, 2008, each
61 provider of services of intermediate care facilities for the mentally retarded shall
62 submit to the department of social services a report on a cash basis that reflects
63 such information as is necessary to determine the amount of the assessment
64 payable for that month.

65 9. Every provider of services of intermediate care facilities for the
66 mentally retarded shall submit a certified annual report of net operating
67 revenues from the furnishing of services of intermediate care facilities for the
68 mentally retarded. The reports shall be in such form as may be prescribed by
69 rule by the director of the department of mental health. Final payments of the
70 assessment for each year shall be due for all providers of services of intermediate
71 care facilities for the mentally retarded upon the due date for submission of the
72 certified annual report.

73 10. The director of the department of mental health shall prescribe by
74 rule the form and content of any document required to be filed pursuant to the
75 provisions of this section.

76 11. Upon receipt of notification from the director of the department of
77 mental health of a provider's delinquency in paying assessments required under
78 this section, the director of the department of social services shall withhold, and
79 shall remit to the director of the department of revenue, an assessment amount
80 estimated by the director of the department of mental health from any payment
81 to be made by the state to the provider.

82 12. In the event a provider objects to the estimate described in subsection
83 11 of this section, or any other decision of the department of mental health
84 related to this section, the provider of services may request a hearing. If a
85 hearing is requested, the director of the department of mental health shall
86 provide the provider of services an opportunity to be heard and to present

87 evidence bearing on the amount due for an assessment or other issue related to
88 this section within thirty days after collection of an amount due or receipt of a
89 request for a hearing, whichever is later. The director shall issue a final decision
90 within forty-five days of the completion of the hearing. After reconsideration of
91 the assessment determination and a final decision by the director of the
92 department of mental health, an intermediate care facility for the mentally
93 retarded provider's appeal of the director's final decision shall be to the
94 administrative hearing commission in accordance with sections 208.156 and
95 621.055, RSMo.

96 13. Notwithstanding any other provision of law to the contrary, appeals
97 regarding this assessment shall be to the circuit court of Cole County or the
98 circuit court in the county in which the facility is located. The circuit court shall
99 hear the matter as the court of original jurisdiction.

100 14. Nothing in this section shall be deemed to affect or in any way limit
101 the tax-exempt or nonprofit status of any intermediate care facility for the
102 mentally retarded granted by state law.

103 15. The director of the department of mental health shall promulgate
104 rules and regulations to implement this section. Any rule or portion of a rule, as
105 that term is defined in section 536.010, RSMo, that is created under the authority
106 delegated in this section shall become effective only if it complies with and is
107 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
108 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any
109 of the powers vested with the general assembly pursuant to chapter 536, RSMo,
110 to review, to delay the effective date, or to disapprove and annul a rule are
111 subsequently held unconstitutional, then the grant of rulemaking authority and
112 any rule proposed or adopted after August 28, 2008, shall be invalid and void.

113 16. The provisions of this section shall expire on **[June] September 30,**
114 **[2009] 2011.**

Section B. Because of the need for continued imposition and collection of
2 certain provider taxes, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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